

## STAFFING NUMBERS, CONFERENCES, AND ROSTERS

### 1. Introduction

Although greater than that prevailing in the early years, the number of the Division's judges, a number that has contracted in recent years, has seen several expansions and contractions. The first expansion, of course, occurred in the fiscal year following the Supreme Court's April 1937 decision upholding the constitutionality of the Act. Thus, from June 30, 1937, to June 30, 1938, the number of regular-staff judges went from 11 to 24. *Making* at 239, footnote 29. (Indeed, recall from chapter 2,4, "The Chief Judges," the Congressional testimony of Chief Trial Examiner George Pratt that when he arrived in Washington in mid-November 1937, there were "24 regular examiners and possibly 40 to 50 men on a per diem basis.") As mentioned earlier, during the fall of 1939 and into early 1940, as Prof. Gross reports, the Division had 39 regular-staff judges. *Reshaping* at 129 (with note 109 at 316) and 184.

Alas, in the fiscal year ending June 30, 1940, 10 of the Division's then 35 judges (some 28.6 percent) were separated based on budgetary restraints. 5 NLRB Annual Report at 123. Indeed, as there described, thenceforth the Division no longer would assign judges to preside at Representation case hearings that appeared to be less than complex. (Actually, since June 1, 1940, Regional Office staffs had been handling 90 percent of the routine cases anyway. 5 *NLRB Annual Report* at 123.) Even so, as one turns the pages of the Board's bound volumes, he or she sees that Division judges frequently presided over "R" cases (most of these are "initial" preelection proceedings, but some involve objections or challenged ballots).

### 2. Annapolis Conference of May 1942

On May 20-22, 1942, the Division held a Trial Examiners Conference at Annapolis, Maryland. Most of what we know today about that conference derives from a photograph taken of the attendees — 51 by count (with two of these being Board members). A copy of that photograph appears at page 19 of *The First Sixty Years*. (A slightly enlarged version of the photo appears at

page 30 of *The First 50 Years*. As already noted, however, only the former publication is shown on the Board's website.) The May 1942 photo is reproduced here:



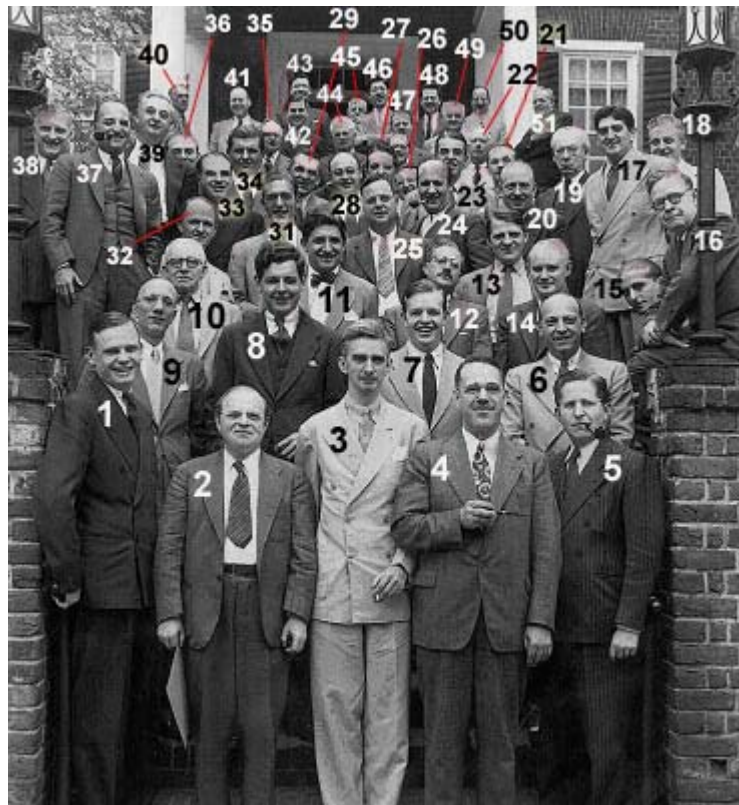
(The foregoing photo is a copy descending from the original copy given to Judge Edward Grandison Smith. Judge Smith's granddaughter, Phoebe Smith Ruckle of Charleston, West Virginia, graciously supplied a copy for this paper.)

The inscription at the bottom of the photo reads:

**TRIAL EXAMINERS' CONFERENCE  
NATIONAL LABOR RELATIONS BOARD  
ANNAPOLIS, MARYLAND — May 22-24, 1942**

Recall from the paragraph just before the section on the LIFE Magazine article about *Weirton Steel*, in June 1940 the Division was hit with a 28.6-percent layoff, from 35 judges down to 25 (or possibly 26). As we shall see in a few pages, the reconstructed roster for May 1942 shows 33 judges. Thus, the number of 49 “trial examiners” (51 minus the 2 Board members) attending the May 1942 Trial Examiners Conference, coming not even 23 months after a major layoff (over 28 percent) of the judges on staff, raises immediate questions. First, do the Board's annual reports for fiscal years 1941 and 1942 indicate a big surge in case filings and trials? (The answer is no.) Second, do the annual reports for those 2 years mention or suggest a net increase in the staff of judges? (Again, the answer is no.) Third, does the Agency’s budget take a great leap forward? (No, again.) Then how do we get from 25 (or 26) judges as of early July 1, 1940, and 32 judges on the reconstructed May 1942 roster, to 49 “trial examiners” — a 53-percent increase in the same month? Did the Division really acquire an extra 16 judges? In a moment the probable explanation is suggested, although a hint of the answer is reflected in the name of at least one attendee.

Respecting the names of the attendees in the May 1942 photo, Chief Judge Robert Giannasi provides several names based on evidence he has received in the form of oral reports or written notes from Chief Judge Melvin Welles (now retired), Deputy Associate General Counsel Norton J. Come (now deceased), and James C. Paradise (a trial examiner from the late 1930s until about early 1942). Also, Chief Judge Pratt’s son, Sherwood Pratt of Brookline, Massachusetts, has identified for us the image of his father in the photo. A numbering system assists in matching names to some of the faces appearing in the photo, and a numbered and cropped copy of the 1942 photo follows (for some computers, there may be a lapse of a few seconds before the photo appears):




From information appearing with the 1942 photo at page 19 of *The First Sixty Years*, we know that, of the five men in the front row, the second and third from the left are, respectively, Board Members William Leiserson (number “2”) and Gerard D. Reilly (number “3”). To Member Reilly’s left is Assistant Chief Judge William R. Ringer (number “4”). Since at least June 1940, Chief Judge Pratt had two assistant chief trial examiners. 5 *NLRB AR* 123, fn. 1. (By 1948 the title was Associate Chief Trial Examiner. 13 *NLRB AR* 5.)

Shifting back to the left side of the photo, we see, in the second row, Judge Horace A. Ruckel (number “9”). To Judge Ruckel’s left, the tall, young man (number “8”) in a dark suit, is Assistant General Counsel Gerhard P. Van Arkel (and a future General Counsel – July 1946 to June 1947). To Van Arkel’s left is Chief Judge George O. Pratt (number “7”). On the next step up, and directly behind number “6,” is Assistant Chief Judge Frank Bloom (number “14”). In just about the center of the group, and some two rows back of Judge Pratt, we see Judge Earl Bellman (number “25”). To Judge Bellman’s right, in the light suit and dark tie, is Judge Bruce Hunt (number “31”). Two steps back, and clearly visible over Judge Hunt’s right shoulder, is Judge Martin Raphael (number “34”).

Moving over to the top right side of the 1942 photo, we see the section previously reproduced which contains the image of Judge Edward Grandison Smith (number "19") with the white hair and wearing a dark suit standing next to a young man (number "17") with dark hair and wearing a light suit. In his March 1970 oral history interview, former Judge Will Maslow implies that he attended this 1942 Annapolis conference. *Maslow* at 32. Presumably, therefore, Judge Maslow is one of those appearing in the above photo.

Based on a perceived familial resemblance with Judge James M. Fitzpatrick (EOD 6-7-1968), some judges think it is possible that #44 in the 1942 photo is the father, Judge James J. Fitzpatrick (EOD 12-1-1937). (A zoom-in copy of that image is shown in a moment.) This paper has no picture of the son, Judge James M. Fitzpatrick. Per the LOS, Judge James J. Fitzpatrick died on 1-22-1953. To #44's left and down slightly is #27. As discussed later, evidence indicates that #27 is probably Judge George Bokat.

An interesting coincidence appears in the May 1942 picture. At least three judges, and probably four, in the photo either were then (Chief Judge Pratt), or were to become, the Chief Judge of the Division. In fact, they include the first three to occupy the Office of Chief Judge that was established in November 1937. The four, in succession, were at the helm of the Division for nearly 35 years, from November 1937 through June 1972. Three of the four are clustered rather close together in the full photo above. A cropped portion that includes these three is shown below:

	<p>In this cropped portion, or inset, we see a closer view of the images of three who either were then or were to become the Chief Judge of the Division:</p> <p>#7 George O. Pratt, Chief Judge from 11-15-1937 to 8/1942.</p> <p>#14 Frank Bloom, Chief Judge from 8/1942 through 12/1946.</p> <p>#4 William R. Ringer, Chief Judge 1/1947 through 11/1961.</p> <p>#27 As mentioned above, #27 is probably George Bokat, who was Chief Judge 12-1-1961 to 6-30-1972. His image, a bit difficult to see in the full photo, is compared later with a photo taken at about the time of his 1972 retirement.</p>
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### 3. Identification Help From Agency's 1938 Conference Photo

A question arises as to Judge Raphael's identification. Thus, it appears, from the decisions in the Board's bound volumes, that Judge Raphael last presided on November 4, 1941, in the case of *New York Merchandise Co.*, 41 NLRB 1078 (6-19-1942), following which trial he issued his Intermediate Report on January 13, 1942. No activity is shown thereafter for him in the Board's bound volumes. (Of course, that could well have been because he joined the war effort in some capacity.)

Nevertheless, the identification of Judge Raphael is confirmed by another source, that being a photograph of the November 15, 1938 Agency conference in Washington, D.C. That photograph is reproduced at page 28 of the Board's publication, *NLRB, The First 50 Years* (photo number 2 on the page), and can be viewed, in its reduced size, at page 17 (photo number 3) of the Board's commemorative publication, *The First Sixty Years*, which can be found on the Board's website. [The Board revised the format of its website in November 2003. At the home page, in the left navigation bar, under the heading for "NLRB Documents," click on "Publications." At the next screen, click on the second item, that being the name of the publication. Choose PDF

in order to see graphics. This opens a Contents page which includes Chapter 2. Click on the link to Pages 15 to 20. When that opens, scroll down to photograph number 3 which is at the bottom of page 17.]

Although the reproduction of the panoramic 1938 photo (some 160 attendees in the photo) appearing on the Board's website is rather small, a copy of the much larger original brings the faces into closer focus. With that closer focus, and an identification chart and numbered silhouette map generously furnished by Judge Ralph Winkler (EOD 4-3-1950; an attendee at the 1938 conference; see photo below) in 2003 to Chief Judge Giannasi, a strong resemblance can be seen between the person named there (number 122) as Martin Raphael and the man (number 34) in this 1942 photograph who has been identified as Martin Raphael. Accordingly, for this paper that identification is found to be well supported.

To assist in understanding the description of the 1938 photograph, a copy is reproduced here, but divided into three panels in order to give a somewhat larger image. (Chief Judge Giannasi graciously loaned the Division's copy of the photo for this paper. David Parker, now the Board's Deputy Executive Secretary, but then the Director of the Division of Information, also played the important role of securing a commercial reproduction of the Division's copy of the panoramic picture to use for this project. His interest and action are greatly appreciated.)



November 15, 1938 Conference Photo — Left Panel





And now for the second of the three panels, the middle panel:

**November 15, 1938 Conference Photo — Middle Panel**

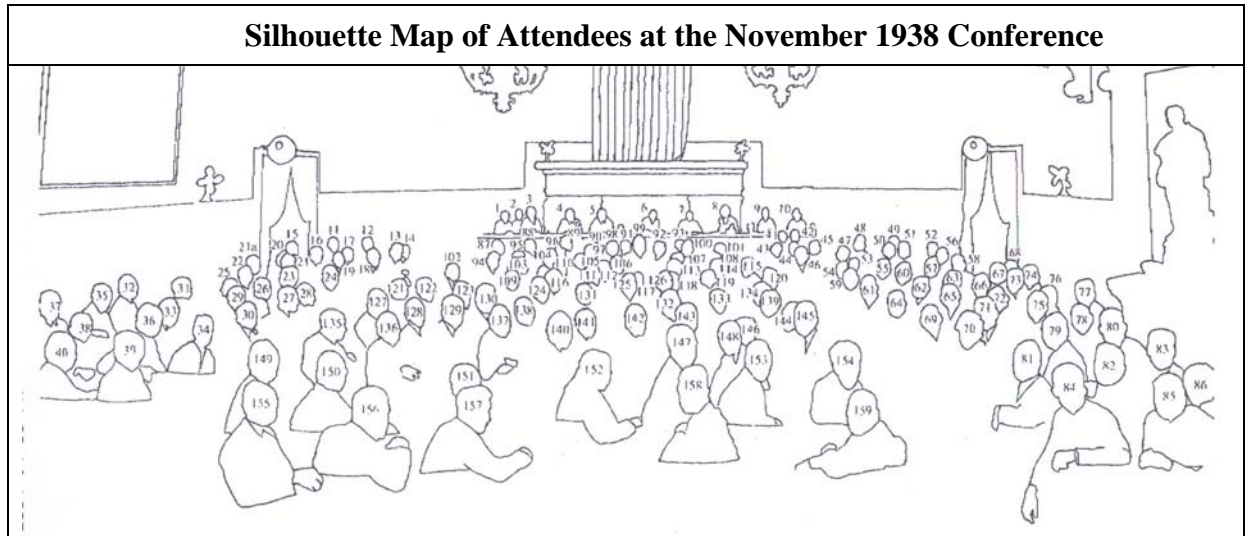


And here, the third of the three panels, the right panel:

**November 15, 1938 Conference Photo — Right Panel**



A reproduced copy of the numbered silhouette map of the attendees follows (with some of the numbered faces in highlighted colors, as added by the author here):



Finally, a reproduced copy of the roster of attendees in the 1938 photograph (with some of the names of judges highlighted, as added by the author here):

<b>Identification Roster of Attendees in 1938 Photograph</b>
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1. Thomas Emerson	54. William Seagle	113. Unidentified
2. Unidentified	55. Alvin Rockwell	114. Warren Woods
3. Robert Watts	56. Frank Bowen	115. Edwin Elliott
4. Charles Fahy	57. Daniel Harrington	116. Wallace Cohen
5. Donald Wakefield Smith	62. Ralph Winkler	117. Arnold Cutler
6. J. Warren Madden	63. Unidentified	118. Malcolm Mason
7. Edwin S. Smith	64. Alan Perl	119. Louis Libbin
8. Nathan Witt	65. Howard Friedman	120. Unidentified
9. Beatrice Stern	66. Bernard Alpert	121. Unidentified
10. George Pratt	67. Lewis Gill	122. Martin Raphael
11. William Ringer	68. Unidentified	123. A. Bruce Hunt
12. Earl Bellman	69. Joseph Robinson	124. Robert Kleeb
13. Towne Nylander	70. Margaret Farmer	125. David McCalmont
14. Unidentified	71. Robert Burstein	126. Marcel Mallet-Prevost
15. Gerhard Van Arkel	72. Richard Salant	127. Howard Lebaron
16. David Persinger	73. Unidentified	128. Warren Sharfman
17. William Walsh	74. Frank Bloom	129. Lawrence Broadwin
18. Fred Mett	75. Edna Loeb (Friedman)	130. Henry Lehman
19. Samuel Zack	76. Lester Asher	131. Mary Schleifer
20. Unidentified	77. Harry Brown	132. Abraham Kaminstein
21. Unidentified	78. David Rein	133. Selma Rice (Rein)
21a. David Saposs	79. Jack Kaufman	134. Lyle Cooper
22. Katherine Ellickson	80. R. Marsden	135. Bernard Freund
23. Elizabeth Bliss	81. William Stix	136. Victor Pascal
24. Paul Nachtman	82. David Shaw	137. Gustaf Erickson
25. Miriam Camp	83. John Lindsay	138. Alan Rosenberg
26. Unidentified	84. Ray Compion	139. Russel Packard
27. Richard Perkins	85. Guy Farmer	140. Unidentified
28. Sara Gamm	86. Philip Phillips	141. Fannie Boyls
29. Eugene Thorrons	87. Unidentified	142. Bliss Daffan
30. Charles Whittemore	88. Unidentified	143. Frank Paone
31. Charles Persons	89. Unidentified	144. Sylvester Garrett
32. Thomas Wilson	90. Unidentified	145. George Rose
33. Webster Powell	91. George Turitz	146. Carol Agger (Forias)
34. Anne Freeling (Schlezinger)	92. Francis Hoague	147. Herbert Glaser
35. Henry Kent	93. Solaman Lippman	148. Robert Cowdrill
36. George Koplow	94. Charles Logan	149. Owsley Vose
37. Charles Douds	95. Unidentified	150. Walter Nolte
38. Jack Krug	96. Unidentified	151. Unidentified
39. Joseph Hoskins	97. James Paradise	152. Margaret Holmes
40. Jack Dorsey	98. Tilford Dudley	153. Wesley McCune
41. Alice Nelson	99. Edward Grandison Smith	154. Jack Karro
42. Virginia Leary	100. Horace Ruckel	155. Harry Cooper
43. William Aicher	101. Harold Cranefield	156. Martin Kurasch
44. Unidentified	102. Henry Winters	157. Andrew Toth
45. Jacob Blum	103. Nathaniel Clark	158. Harry Roberts
46. Edward Schneider	104. David Morse	159. Sol Davison
47. Alice Rosseler	105. Charles Graham	
48. Bennett Schauffler	106. Aaron Warner	
49. Harry Jones	107. Unidentified	
50. W. G. Stewart Sherman	108. Ida Klaus	
51. Robert Rissman	109. Paul Kuelthau	
52. Garnett Patterson	110. A. Howard Myers	
53. Elinore Herrick	111. Drexel Sprecher	
(Tentative Identification)	112. Leonard Bjork	





**4. Table of Comparison Photo-Images**

Another identification from the 1942 photo now seems possible using a full-sized copy of the original of the photo of the Agency's November 1938 conference. Thus, a close resemblance can be observed between person number 33 (Webster Powell per the ID list furnished by Judge Ralph Winkler) in the 1938 photo and the judge in position number 12 of the 1942 photo. Although the hair appears a bit darker from 4 years earlier, the eyeglass frames appear to be the same style. And perhaps of most significance, the mustache appears to be of the same shape and style. Accordingly, for this paper the conclusion is made that the person standing in position number 12 in the 1942 photo appears to be Judge Webster Powell.

As with Judge Webster Powell, a further identification is possible. Look at the top left of the numbered 1942 photo, above. At the very back, on the left side, number 40 — seemingly barely visible. Yet in the 1938 photo a possible resemblance can be seen between the man above, number 40 in the 1942 numbered photo, and a man (number 30 on the identification list) seen on the far left side of the panoramic photo of 1938. A zoom-in view of the 1938 photo's left side removes virtually all doubt — the two men are one and the same person. Thus, from this matching of 1942's number 40 with 1938's number 30 (named on the identification list for nearly all the 160 attendees in the 1938 photo), we learn that our 1942's number 40, the man way up in the back, is Judge Charles W. Whittemore. Attendee and future Judge Ralph Winkler (EOD April 3, 1950) appears on the silhouette map (right side, center) and identification sheet at position number 62 in the 1938 photo.

Incorporating the foregoing three comparisons, plus Judge Winkler, and #44 from the 1942 photo, into a table, we have the following display:

<p>Martin Raphael</p> <p>From the 1938 photo, #122 on the ID list of attendees, and per the location map for the attendees.</p>			<p>#34 in the 1942 photo. The resemblance is strong, confirming the identification of #34 here as the #122 in the 1938 photo, identified there as Martin Raphael.</p> <p>EOD January 1, 1938.</p>
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<p>Webster Powell</p> <p>From the 1938 photo, #33 on the ID list of attendees, and per the location map for the attendees.</p>			<p>#12 in the 1942 photo. A strong resemblance. The hair is not as dark, but the hairline is very similar, as are the glasses and, especially, the mustache. This is Judge Powell. EOD April 1, 1938.</p>
<p>Charles W. Whittemore</p> <p>From the 1938 photo, #30 on the ID list of attendees, and per the location map for the attendees.</p>			<p>#40 in the 1942 photo. The features are very similar. This is deemed to be the same person as 1938's #30 — Judge Charles W. Whittemore. EOD August 1, 1938.</p>
<p>Ralph Winkler</p> <p>From the 1938 photo, #62 on the ID list of attendees, and per the silhouette map for the attendees. EOD April 3, 1950.</p> <p>(Judge Winkler's son, Peter Winkler, has confirmed this identification.)</p>			<p>Research discussions for this paper indicate that #44 from the 1942 photo may well be Judge James J. Fitzpatrick (EOD 12-1-1937), the father of Judge James M. Fitzpatrick (EOD 6-7-1968).</p>

## 5. The Nonjudge Attendees in the May 1942 Photo

The possibility that one of the 1942 group was a per diem judge is so remote as to be virtually nonexistent. Although by policy the Board could appoint a per diem judge in an emergency shortage, in fact, from June 1940 through May 1942, the Board's bound volumes appear to disclose only one case (in March 1942) in which an apparent per diem judge presided at a ULP trial (and no apparent per diem judge for a representation case hearing). Thus, the conclusion here is that none of the 16 was a per diem judge. Also, it is possible that the other 16 were either, like Van Arkel, members of the Board's legal section (with the General Counsel) or Board's legal staff (the "Review Section" in those days), or both. In the early years, the names of those from the Review

Section would appear on the reported Board decisions followed by the designation, “of counsel to the Board.”

Originally the thought at this point was that the probable explanation for the additional 16 persons in attendance at the May 1942 Trial Examiners Conference is that an invitation was extended to the Regional Offices to send some of their personnel who frequently were appointed by the Chief Judge as “trial examiners” to hear representation cases. Indeed, as described earlier, starting about June 1, 1940, personnel in the Regional Offices began handling the routine representation cases. This progressed so that eventually they were presiding over virtually all such hearings. 5 *NLRB Annual Report* 123; 6 *NLRB Annual Report* 9; 7 *NLRB Annual Report* 14.

In his March 1969 oral history interview, then Chief Trial Examiner Bokats recalls that in the late 1930s the Division had recommended to the Board that, as the judges were so busy presiding over complaint cases, the Board authorize Regional Office personnel to handle most of the representation cases. As an Assistant Chief Trial Examiner, Judge Bokats went to various Regional Offices and conducted training conferences on “how to conduct the hearing, what to get in the record. And we gradually over the years divorced ourselves where we did not hear any [initial] representation cases at all.” *Bokats* at 61-64. By comparing the names of those regional office personnel, in the reported representation decisions, with the two managing officials named in the lists of the Regional Offices appearing in the Board's Annual Reports during these years, we see that they usually were the Regional Attorneys. Thus, it was thought, this easily would account for all or most of the extra 16 attendees.

However, Chief Judge Giannasi has submitted this compelling observation:

In my opinion, the extra non-trial examiners in the picture would most likely be D.C.-based Board or General Counsel staff since the conference was held in Annapolis, Maryland, near Washington. It was War time and plane travel was not as prevalent as it is today. Nor would it be likely that the budget would permit travel to D.C. for a lot of regional office personnel.

That observation is persuasive, and it is likely that Assistant General Counsel Van Arkel was just one of several from the Washington staff outside the Division. Thus, aside from possibly a few persons attending from nearby Regional Offices, the conclusion here is that set forth in Judge Giannasi's quoted opinion.

This note about the number of judges in attendance at this conference. Unlike in more recent times, it appears that in the early years (or at least for this



1942 conference), the Division did not block out a week for no trials in order to facilitate attendance at the May 22-24, 1942 Trial Examiners Conference. As a 1942 calendar reflects, the only weekday for the conference was Friday, May 22, with the other 2 days of the conference falling on a Saturday and a Sunday.

Even with the mostly weekend schedule, it is quite possible that a few of the judges either arrived a bit late or (especially if the Sunday portion was limited to Sunday afternoon) had to leave a bit early. For example, Judge Thomas S. Wilson could not have made it at all, for he was presiding at a representation hearing on that Friday and Saturday, May 22-23 — all the way out in Globe, Arizona. 44 NLRB 1160. Judge Charles E. Persons had to preside the following Monday, May 25,..... in Jacksonville, Florida. 42 NLRB 272. Perhaps he was able to take a night train to get there in time. Notwithstanding the possibility of a few late arrivals or early departures, if the group photo, as seems likely, was taken that Saturday, May 23, then anyone arriving late on Friday or departing early on Sunday probably would still be in the photo.

Finally, as we leave the group photo of May 1942 (in about a dozen pages, we reach the reconstructed roster as of May 1942), we should pause. The group photo of May 1942 is the last one the Division has until 1985 — over 40 years later! Those in the May 1942 really are the last photographic image we have of the judges, and a few others from elsewhere in the Agency, from the early years.

## 6. Methodology

As just noted in the introduction to this section on staffing numbers, Prof. Gross tells us that, as of June 30, 1937, the Division had 11 regular-staff judges, and that such number had grown to 24 by the close of the fiscal year ending June 30, 1938. Also, as we saw, Chief Judge Pratt testified before Congress that at his mid-November 1937 arrival in Washington there (already) were 24 regular-staff judges. The Division's staff obviously had been increased to handle the increased workload following the Supreme Court's April 1937 decision upholding the constitutionality of the Act. Thus, the Board notes its vastly increased caseload following that decision (plural, actually) at 3 *NLRB Annual Report* 1. Moreover, the impact is seen in a huge jump in the Board's budget from some \$791,000 for FY 1937, 2 *NLRB Annual Report* 168, to nearly \$2,500,000 for FY 1938, 3 *NLRB Annual Report* 283.

Would it be possible for us to reconstruct the rosters for June 1937 (11 regular-staff judges) and June 1938 (24 regular-staff judges)? To do so at this point, with the earliest roster of judges being the one for January 1957, we must chiefly rely on the bound volumes containing the published decisions of the National Labor Relations Board and the names disclosed by searching those published decisions in the Board's bound volumes. That methodology produces

the following reconstructed rosters (probably not perfect, but hopefully close) for June 30, 1937, June 30, 1938, August 1, 1938, February 1940, July 1940, and May 1942.

## 7. Reconstructed Roster for June 1937

Short of discovering an early-day roster of the judges, this reconstructed list takes us back as close to the beginning as we are likely to get. In short, this roster of the original 11, as the list shall be called here, names the most likely members of the very first group of NLRB regular-staff judges. Clearly the 11 were not hired on the same date, for the dates of their first ULP trials or representation hearings vary substantially. Although these 11 judges are selected as the most likely judges to have constituted the list of 11, it cannot be determined exactly when each became regular staff. Thus, as with Judge Ringer and many others who came a bit later, some or all of the 11 presumably served briefly as per diem judges. Even so, the EOD date assigned is that for the first day of the month of the first reported case at which the judge presided. Such date is assigned as a compromise between what often was a substantially earlier date after which the judge trained, or a later date after the judge served on a per diem basis.

The urge is strong to make an exception in the deeming process regarding the first day of the first month where the actual beginning months of one or more judges parallel that of a judge for whom there is a Division EOD date some months later. Two good examples of this involve Judge Ringer, mentioned in the next paragraph, and Judge Bokat (both future chief judges). Both are included on the reconstructed roster for June 1938. As we see in a moment, several judges started within a couple of weeks or so of Judge Ringer in late May 1937, yet, in this paper, some of them receive deemed EOD dates matching their first month, while Judge Ringer is stuck with his Division EOD date of 10-1-1937. This seems unfair, but it is done out of necessity. As noted above, Prof. Gross reports that as of June 30, 1937, there were only 11 regular-staff judges, while, as we shall see, there were 19 judges ostensibly eligible for those 11 slots on the list (20 judges if Judge Ringer were included).

Similarly, when we come to the reconstructed roster for June 1938, Judge Mapes Davidson, for whom no Division EOD date is available, receives a deemed EOD date of October 1, 1937, the month of his first reported trial, while Judge Bokat, who also started in October 1937 (on a per diem basis as then Chief Judge Bokat reports, *Bokat* at 7), receives his Division EOD date of February 1, 1938, that appears on the January 10, 1957 roster — an EOD date he confirms for status as one of the regular-staff members of the Judges Corps. *Bokat* at 9.

It must be said here that, were it not for Prof. Gross' report that there were 11 regular-staff judges as of the June 30 close of FY 1937, the list here

would have at least a half dozen more judges. How can the following list of 19 eligibles be reduced to 11? Reflecting the difficulty presented, the name of Judge Ringer, a future Chief Judge, is not included. Yet we know from the January 1957 roster that Judge Ringer started May 24, 1937, on a per diem basis, converting to regular-staff on October 1, 1937. [Actually, the roster has a slight error in placing the date as May 27, for the reported cases show that Judge Ringer started his (per diem) presiding 3 days earlier, on May 24, 1937. See 3 NLRB 332.] How many of the others, starting in the May-June 1937 timeframe, worked for 2 or 3 months, or more, on a per diem basis? (Perhaps they were hired, on a per diem basis, in anticipation of an increased budget for FY 1938 after the April 1937 Supreme Court decision upholding the constitutionality of the Act.) Yet, if all those with starting trial dates of May or June 1937 are omitted, only 4 of the 19 would be on the list. In order to meet the number of 11, some discretion must be exercised. Thus, names of those are deleted if they did not thereafter show regular published trials at least until the June 1938 roster.

Also, in reconstructing the list of the original 11, note should be made of the possibility that one or two of those who presided at a few of the trials or hearings in the year and a half leading up to June 1937 in fact were regular-staff judges who simply left the Division and possibly the Agency after their brief service. Actually, it seems unlikely that any were regular-staff judges. Numbering no more than about 10 or 12, these trial examiners usually show no more than a couple of reported cases (although a couple of them presided five or six times or so). Whether they were per diem judges or persons in other positions in the Agency called upon to preside is not presently ascertainable.

Finally, a problem. Recall Judge Pratt's Congressional testimony (in December 1939 or January 1940) that when he arrived in Washington in mid-November 1937 to be the Chief Judge there were 24 regular-staff judges and some 40 to 50 "men on a per diem basis." *Reshaping* at 11 (cited earlier). Recall also the report by Prof. Gross that the number of regular-staff judges jumped from 11 to 24 between June 1937 and June 1938 (*Making* at 239 fn. 29, citing data supplied by the Board to the Smith Committee hearing). Notwithstanding the foregoing, some 30 years later Judge Pratt recalls different numbers in his oral history interview, taken by one of Prof. Gross' graduate student researchers on March 18, 1970 (interview cited in *Making* at 159 fn. 42). Judge Pratt states there that when he became the Chief Judge that November 1937 there were only 3 regular-staff judges (Frank Bloom, E. G. Smith, and Charles Wood) and some 60 persons on the list of those available for assignment as per diem trial examiners. *Pratt* at 121-122. By February 1, 1938, he had removed 20 names from the per diem list and added another 40 names (for a total of 80 names on the per diem list). *Pratt* at 122-123.

Although this paper, just above, mentions Judge Pratt's different numbers as supplied in the March 1970 oral history interview, the choice here is the same as that taken by Prof. Gross, in his books, of relying on the data given to Congress in 1939-1940 by Judge Pratt and the Agency. (But this is not an easy choice, for from the aspect of assigning deemed EOD dates, Judge Pratt's 1970 statement, of mostly per diem judges until August 1, 1938, fits the evidence better than do the numbers reported by Prof. Gross.)

On the foregoing basis, we now have the following deemed list of the 19 candidates for inclusion in the original 11 positions of regular-staff NLRB judges. Their "potential" EOD date is based on the month when they first presided at a reported NLRB proceeding. Note that not 1 of the 19 names appears on the Division's roster of January 10, 1957 (the first available listing of the judges). By 1957, all had left the Division, even the Agency, for any of various reasons, including death as with (per the LOS) the January 15, 1953 passing of Judge Henry J. Kent.

	<u>Name</u>	<u>Potential EOD Date</u>
1.	Batten, James C.	5-1-1937
2.	Bloom, Frank	5-1-1937
3.	Delaney, Emmett P.	1-1-1937
4.	Dudley, Tilford	6-1-1937
5.	Ewell, James G.	6-1-1937
6.	Gates, Robert M.	1-1-1936
7.	Kent, Henry J.	6-1-1937
8.	Korey, Harold R.	6-1-1937
9.	Lindsay, John T.	5-1-1937
10.	McNally, Patrick H.	6-1-1937
11.	O'Brien, Clifford D.	5-1-1937
12.	Paradise, James C.	6-1-1937
13.	Persons, Charles E.	6-1-1937
14.	Rockwell, Alvin J.	6-1-1937
15.	Seagle, William	4-1-1937
16.	Smith, Edward Grandison	5-1-1937
17.	Webb, William P.	6-1-1937
18.	Wilbur, Walter	12-1-1935
19.	Wood, Charles A.	12-1-1935

Although Judge Emmett Delaney presided at a handful of trials in May-June 1936, and for several months into 1937, he also served as the Board's trial attorney in at least two cases during 1936 (5 NLRB 601 and 2 NLRB 626). In those early days, before the APA (Administrative Procedure Act) and the Taft-Hartley Act, the Board enjoyed more flexibility in assigning personnel to serve

temporarily as trial examiners. Accordingly, Judge Delaney's deemed EOD date is January 1, 1937.

The Board itself tells us that Judge Delaney "resigned from the staff of the Board prior to the" September 2, 1937 resumption in *Condenser Corp. of America*, 22 NLRB 347, 354 (1940). The reported decisions show that Judge Delaney's last trials were in May 1937, and that he worked on his decisions ("Intermediate Reports," or IRs) at least until early June. One example is seen at 3 NLRB 535. A bigger case, although tried in April 1937, could have required more time to write, thus keeping him busy until the end of June. The Board, 4 NLRB 844, does not give the date of the IR, and in those days copies of IRs rarely were attached to Board decisions. Although Judge Delaney possibly could be included on the list of original judges, a more logical choice seems to be Tilford E. Dudley. True, his first reported trials are not until June 1937, but he served thereafter into the 1940s. Judge Dudley is included on that basis.

Judge Robert M. Gates appears to be the same Robert Gates mentioned by Prof. Gross as appointed about November 1937 to be a "special examiner" to assist in investigating certain activities at NLRB Region 21 (Los Angeles), and in June 1938 Special Examiner Gates went to Los Angeles for that purpose. *Reshaping* at 119-127, 230. Judge Gates could have left the Division to assist the Board's Secretary. (His reported cases show a gap between late 1937 and late 1941.) And then in early 1941, as Prof. Gross describes in *Reshaping* at 230, Robert Gates became an assistant director of the new Administrative Division. Later in 1941, however, and into 1942, we find that Judge Robert M. Gates is back presiding for a few more cases before he apparently leaves to join the war effort in some capacity. His cases with the Division pick up again with an October 1945 trial. Unfortunately, Judge Gates soon becomes ill. His last trial, in July 1946, is reported at 74 NLRB 1597 (1947). Following the close of the trial that July 15, 1946, Judge Gates resigns because of poor health. These matters are so reported by Judge Robert N. Denham (the soon-to-be-General Counsel after Taft-Hartley became effective) who was assigned to write the Intermediate Report in the case. 74 NLRB 1597 at 1605.

The last strike comes down to a choice of either Charles E. Persons or Alvin J. Rockwell (a future General Counsel, January 1944 to September 1945). Although they both started presiding in June 1937, Judge Rockwell served only about 1 year. He apparently then transferred to some other position in the Agency, and later was appointed to the position of General Counsel. (In a September 1938 trial, one of Region 2's trial attorneys was an "Alvin J. Rockwell." *Paramount Broadcasting*, 13 NLRB 59 (1939).) By contrast, Judge Persons served well into the 1940s. On the basis of that longer service in the Division, Judge Persons, rather than Judge Rockwell, is included among the original 11 regular-staff judges as of June 30, 1937.

With the foregoing observations made, and exercising the discretion of not including those whose records were not thereafter sufficiently active to indicate the status of regular staff (and with Judge Ringer not included because his Division EOD date is 10-1-1937), the following constitutes the reconstructed June 30, 1937 list of the original 11 regular-staff judges:

	<u>Name</u>	<u>Deemed EOD Date</u>
1.	Batten, James C.	5-1-1937
2.	Bloom, Frank	5-1-1937
3.	Dudley, Tilford E.	6-1-1937
4.	Gates, Robert M.	1-1-1936
5.	Kent, Henry J.	6-1-1937
6.	Paradise, James C.	6-1-1937
7.	Persons, Charles E.	6-1-1937
8.	Seagle, William	4-1-1937
9.	Smith, Edward Grandison	5-1-1937
10.	Wilbur, Walter	12-1-1935
11.	Wood, Charles A.	12-1-1935

#### 8. Reconstructed Roster for June 1938

Recall now from Prof. Gross, *Making* at 239 fn. 29 (citing evidence presented at the Smith Committee hearings in 1939-1940), that as of the close of the Board's third fiscal year on June 30, 1938, the Division's regular staff judges had increased to 24. Recall also, from 3 *NLRB Annual Report* at 244, the Board's historic decision that as of August 1, 1938, it would no longer employ (except in emergencies) per diem trial examiners, but instead would then begin a policy of employing only regular staff judges to preside at unfair labor practice trials. Let us therefore reconstruct, as best we can, the roster as of June 30, 1938. In the list below, all dates are deemed, except an "e" preceding the EOD date indicates that the EOD date is specified on one of the Division's rosters or was determined by Division staff in searching Division records.

As with the reconstructed list for June 1937, were it not for the data cited by Prof. Gross showing that there were 24 judges as of June 30, 1938, several additional names would be included here because of their trial dates. To reach the 24 specified, some who ostensibly qualified (such as Judges Theodore R. Bland, William H. Griffin, Albert L. Lohm, Joseph L. Maguire, and Horace A. Ruckel, plus others) had to be excluded. As we see in just a moment, however, some will appear on the August 1, 1938 roster. Admittedly, whether some of the judges should appear on this list or the next list involves a certain amount of arbitrary selection, for in fact, aside from the limitation

imposed by the number 24, some of the judges deferred to the next list have as much claim to appear on this list as some of those included.

Judge Howard Myers would have been included except (similar to Judge Ringer's situation) his established Division EOD date (August 1, 1938) comes later. Judge Charles A. Wood is not included. Although he presided at two hearings later in 1938, those were his last. Largely on that basis, and in order to limit the names to 24, Judge Wood is not included here. As with Judge Ringer, Judge John T. Lindsay began presiding in May 1937. In the absence of a better date, the EOD date of October 1, 1937, carried by Judge Ringer, is adopted here as a reasonable date to deem here for Judge Lindsay.

We now have the following as the reconstructed roster of June 30, 1938, with Judge Pratt as the Chief Judge:

	<u><b>Name</b></u>	<u><b>Deemed EOD Date</b></u>
1.	Batten, James C.	5-1-1937
2.	Bellman, Earl S.	e-2-1-38
3.	Bloom, Frank	5-1-1937
4.	Bokat, George	e-2-1-1938
5.	Davidson, Mapes	10-1-1937
6.	Denham, Robert N.	3-1-1938
7.	Dudley, Tilford	6-1-1937
8.	Erickson, Gustaf B.	3-1-1938
9.	Fitzpatrick, James J.	12-1-1937
10.	Jaffee, Samuel H.	12-1-1937
11.	Kennedy, Thomas H.	10-1-1937
12.	Kent, Henry J.	6-1-1937
13.	Lindsay, John T.	10-1-1937
14.	Paradise, James C.	6-1-1937
15.	Persons, Charles E.	6-1-1937
16.	Powell, Webster	4-1-1938
17.	Pratt, George O.	11-15-1937
18.	Raphael, Martin	1-1-1938
19.	Ringer, William R.	e-10-1-1937
20.	Rockwell, Alvin J.	9-1-1937
21.	Seagle, William	4-1-1937
22.	Smith, Edward Grandison	5-1-1937
23.	Ward, Peter F.	2-1-1938
24.	Wilbur, Walter	12-1-1935

A 1927 graduate from New York University Law School, **Bokat** at 1, George Bokat (born November 15, 1904, in New York) practiced law in New

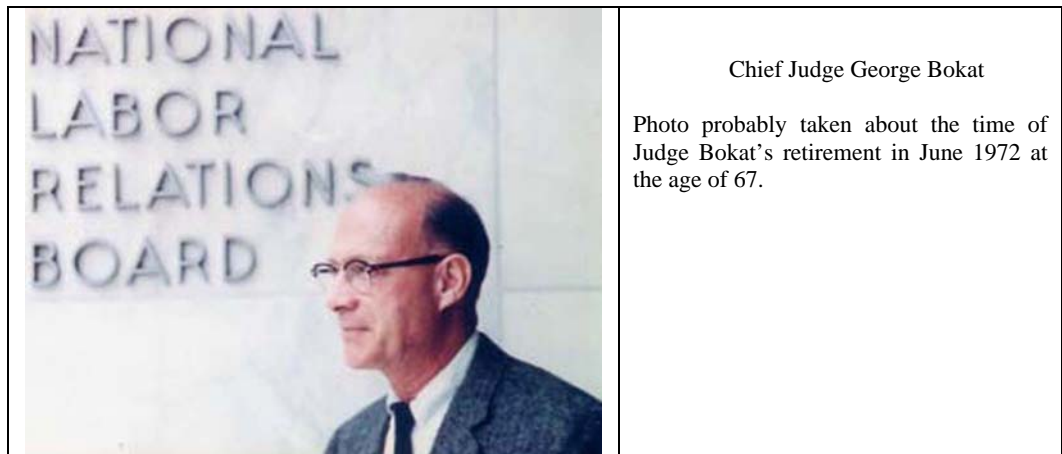


York City, becoming a successful trial lawyer, for several years. About the time he had a big case representing workers, and became interested in the rights of workers, Bokát saw a note in the *New York Times* that the Act had been held constitutional and that Chairman J. Warren Madden said that the Agency needed employees. *Bokat* at 1-4. Bokát contacted the Board, was interviewed by General Counsel Charles Fahy and Associate General Counsel Robert Watts and was offered a position as, apparently, the Regional Attorney at Kansas City (Region 17), working for Regional Director George Pratt. *Bokat* at 5, 8. However, the pay was substantially less than Bokát was earning and he declined. He was asked to consider the matter overnight, a request he agreed to.

After leaving the interview, but apparently still at the Board's offices, Bokát met an acquaintance of his, James C. Paradise. Bokát learned that Paradise was working as a Trial Examiner and, at Paradise's suggestion, they went to see the Secretary, Benedict Wolf, who, it turned out, was an undergraduate classmate of Bokát's. They marched in for an interview with the Board, and 2 days later, on October 12, 1937, Judge Bokát, admittedly knowing nothing about the Act, was presiding (as a per diem judge) in upstate New York at his first unfair labor practice trial. *Bokat* at 3-7; *Making* at 240-241.

As we saw earlier in the listing of the Chief Judges, Judge Bokát ranks third, behind Chief Judges William Ringer and Melvin Welles, for having served (for over 10 years) the longest in that position. Moreover, of all the judges hired during the 1930s, Judge Bokát's nearly 35-year term of service (ending with the June 30, 1972 completion of his service as Chief Judge) was one of the two longest terms served by that group. (As we see later in the Retirements section, Judge Thomas S. Wilson was the other.)

A son of Judge Bokát, Dr. Robert Bokát of Hilton Head Island, SC, sends us this picture of his father standing under the Agency's nameplate at the Board's office building. Dr. Bokát suspects that the photo was taken about the time of Judge Bokát's retirement in June 1972 at the age of 67.



Both of Judge Bokats's sons (Robert Bokats, mentioned above, and Stephen Bokats of Chevy Chase, Maryland), have inspected the (emailed) May 1942 photo with, and without, the red ID numbers, shown earlier. Their opinions range from a "maybe" to a positive that attendee #27 in the 1942 photo is their father. In the box that follows, zoom-in copies are made of #27 from the May 1942 group photo, one with the red ID numbers, and one without. As can be seen, as the photo is enlarged, distortions interfere with clarity, and thus make a positive identification more difficult.



Stephen Bokats reports that his father died on November 15, 1973 (Judge Bokats's birthday), at the age of 69. Judge Bokats is buried at National Memorial Park, Alexandria, Virginia.

## 9. Reconstructed Roster for August 1, 1938

Turn now to the task of reconstructing the roster of regular-staff judges based on the Board's historic decision (see 3 *NLRB Annual Report* at 244) that as of August 1, 1938, it would no longer employ per diem trial examiners (except when no regular staff judges were available), but instead would then begin a policy of employing only regular staff judges to preside at unfair labor practice trials. In the list below, all dates are deemed, except an "e" preceding the EOD date indicates that the EOD date is specified on one of the Division

rosters or was determined by Division staff in searching Division records. As a practical matter, with the exception of Judge Walter Wilbur (who apparently left the Division in August 1938 and returned, per the reported decisions, in April 1941), we are simply adding to the list of 24 that appears for the list of June 30, 1938, above. The additional names expand this August 1, 1938 list to a total of 35 (with Judge Pratt the Chief Judge), as follows:

	<u>Name</u>	<u>Deemed EOD Date</u>
1.	Batten, James C.	5-1-1937
2.	Bellman, Earl S.	e-2-1-1938
3.	Bland, Theodore R.	8-1-1938
4.	Bloom, Frank	5-1-1937
5.	Bokat, George	e-2-1-1938
6.	Davidson, Mapes	10-1-1937
7.	Denham, Robert N.	3-1-1938
8.	Dudley, Tilford	6-1-1937
9.	Erickson, Gustaf B.	3-1-1938
10.	Fitzpatrick, James J.	12-1-1937
11.	Hill, Madison	1-1-1939
12.	Jaffee, Samuel H.	12-1-1937
13.	Kennedy, Thomas H.	10-1-1937
14.	Kent, Henry J.	6-1-1937
15.	Keirnan, Joseph F.	8-1-1938
16.	Lindsay, John T.	10-1-1937
17.	Lohm, Albert L.	8-1-1938
18.	Maguire, Joseph L.	8-1-1938
19.	McNally, Patrick H.	8-1-1938
20.	Myers, Howard	e8-1-1938
21.	Paradise, James C.	6-1-1937
22.	Persons, Charles E.	6-1-1937
23.	Powell, Webster	4-1-1938
24.	Pratt, George O.	11-15-1937
25.	Raphael, Martin	1-1-1938
26.	Ringer, William R.	e-10-1-1937
27.	Ruckel, Horace A.	8-1-1938
28.	Schmidt, Henry W. Jr.	8-1-1938
29.	Seagle, William	4-1-1937
30.	Smith, Edward Grandison	5-1-1937
31.	Ward, Peter F.	2-1-1938
32.	Webb, William P.	8-1-1938
33.	Wenzel, Herbert	8-1-1938
34.	Whittemore, Charles W.	e8-1-1938
35.	Wilson, Thomas S.	e8-1-1938

## 10. Reconstructed Roster for February 1940

Return now to the 20 judges named by Prof. Gross and listed earlier. With Chief Judge Pratt included, the list would total 21 judges (with 12 names being among the foregoing 24 and 8 being new names), except that, as indicated earlier, Judge Sidney Sugerman is not included here because his tenure is deemed to have been so brief. Thus, the 20 judges named by Prof. Gross are as follows:

James Batten	Earl S. Bellman
Frank Bloom	George Bokat
Mapes Davidson	Tilford Dudley
A. Bruce Hunt	Henry J. Kent
Charles Persons	George O. Pratt
Martin Raphael	Mortimer Riemer
William R. Ringer	Henry Schmidt
William Seagle	Guy Van Schaick
W. P. Webb	Herbert Wenzel
Charles Whittemore	Thomas Wilson

Of the foregoing 20 names, all but Judges Hunt, Riemer, and Van Schaick are names appearing on the August 1, 1938 roster, above. Recall that around February 1940 (18 months following the Board's historic decision to convert to a roster of all regular-staff judges), the regular-staff judges numbered about 39. Besides the 20 above, who were the other 19? Aside from whatever documents were available to Prof. Gross, or produced at the Congressional hearings in 1939 and 1940 (see, generally, *Reshaping* at 160, 183-186, 316 fn. 109), documents not available here, we have the Board's decisions reported in the bound volumes from which to glean, or confirm, the names of the other 19 judges. After reviewing those decisions, we can add the following 19 names (all of which are included on the August 1, 1938 roster with the exception of Judges Barton, Bell, and Hektoen):

William B. Barton	Berdon M. Bell
Robert N. Denham	Gustaf B. Erickson
James J. Fitzpatrick	Josef L. Hektoen
Madison Hill	Samuel H. Jaffee
Thomas H. Kennedy	John T. Lindsay
Albert L. Lohm	Joseph L. Maguire
Patrick H. McNally	Howard Myers
James C. Paradise	Webster Powell
Horace A. Ruckel	Edward Grandison Smith
Peter F. Ward	

Now combining the two groups of 20 and 19, we have as the probable February 1940 roster (with George Pratt as the Chief Judge) the following 39 regular-staff judges:

Barton, William B.	Batten, James C.
Bell, Berdon M.	Bellman, Earl S.
Bloom, Frank	Bokat, George
Davidson, Mapes	Denham, Robert N.
Dudley, Tilford	Erickson, Gustaf B.
Fitzpatrick, James J.	Hektoen, Josef L.
Hill, Madison	Hunt, A. Bruce
Jaffee, Samuel H.	Kennedy, Thomas H.
Kent, Henry J.	Lindsay, John. T.
Lohm, Albert L.	Maguire, Joseph L.
McNally, Patrick H.	Myers, Howard
Paradise, James C.	Persons, Charles E.
Powell, Webster	Pratt, George O.
Raphael, Martin	Riemer, Mortimer
Ringer, William R.	Ruckel, Horace A.
Schmidt, Henry W. Jr.	Seagle, William
Smith, Edward G.	Van Schaick, Guy
Ward, Peter F.	William P. Webb
Wenzel, Herbert	Whittemore, Charles W.
Wilson, Thomas S.	

This note regarding Judge William Seagle. Judge Seagle's trials or hearings in the reported Board decisions conclude with his presiding at a representation case in July 1939 — 15 NLRB 572. He nevertheless is included in the foregoing list because, as Prof. Gross describes in *Reshaping* at 185, Judge Seagle testified (with Prof. Gross summarizing some of that testimony) before the Smith Committee in early 1940. Even though it is possible that Judge Seagle had already left the Division, and the Agency, by the time of his early 1940 testimony before Congress, for the purpose of this paper it is assumed that his departure from the Division did not occur until after his early 1940 testimony. On that basis, Judge Seagle is named on the foregoing roster.

Observe also that Judge Joseph F. Keirnan's name is not carried forward to this list from the August 1, 1938 roster. Judge Keirnan's first reported case (8 NLRB 792) reflects that he presided beginning in December 1937, and his last reported case at which he presided opened in August 1939 (15 NLRB 716). Judge Keirnan (the spelling appearing the most; other times rendered as "Kiernan") had several cases in 1938 and also in 1939. Based on that record, his name was included on the August 1, 1938 roster. The reason for the absence of his name from the current list is the fact, discussed briefly in

the very next section, that the Board experienced “budget reductions” during the fiscal year beginning July 1, 1939. 5 *NLRB AR* 123 (fiscal year ending June 30, 1940). Thus, the most likely explanation for the absence of Judge Keirnan from the reported cases after August 1939 is that he was one of the first judges to be laid off.

### 11. Reconstructed Roster for July 1940

As already mentioned, within just a few weeks after February 1940, and for whatever reason, 4 of the 39 judges were gone. (Judge Mapes Davidson, for example, resigned on March 17, 1940, in a dispute with the Board about certain alleged Communists in the Agency. *Reshaping* at 205.) With the total down to 35, and the budget axe swinging, 10 more judges were separated (see 5 *NLRB AR* 123), reducing the total judges in the Division to 25. Turning again to the bound volumes of the Board's decisions, one can see the impact of the foregoing departures. Familiar names no longer are seen as presiding at trials, for the loss of the several judges is almost graphically apparent. Notwithstanding the number of 25 judges mentioned at 5 *NLRB AR* 123, the Board's reported decisions show that 28 judges were presiding at trials and hearings both before and well after July 1940. Thus, with George Pratt serving as Chief Judge, the following is presented here as the Division's reconstructed roster of 28 judges at the July 1, 1940 start of the Board's Fiscal Year 1941:

Barton, William B.	Batten, James C.
Bellman, Earl S.	Bloom, Frank
Bokat, George	Denham, Robert N.
Dudley, Tilford	Erickson, Gustaf B.
Fitzpatrick, James J.	Hektoen, Josef L.
Hunt, A. Bruce	Jaffee, Samuel H.
Kennedy, Thomas H.	Kent, Henry
Myers, Howard	Paradise, James C.
Persons, Charles E.	Powell, Webster
Pratt, George O.	Raphael, Martin
Rierner, Mortimer	Ringer, William R.
Ruckel, Horace A.	Smith, Edward Grandison
Ward, Peter F.	William P. Webb
Whittemore, Charles W.	Wilson, Thomas S.

Judge Patrick H. McNally is not included on the foregoing roster because his trials, as reported in the Board's bound volumes, concluded in April 1940 (29 *NLRB* 360). Although he did preside at four trials in 1941 (March, April, June, and September), and in none thereafter, it is assumed here that the 1941 trials were instances where he was called upon when the Division found itself in tight spots and needed per diem help.

## 12. Reconstructed Roster for May 1942

As mentioned earlier, the ULP caseload for the judges does not show any substantial increase during the previous 22 months since July 1, 1940, and the annual reports for fiscal years 1941 and 1942 do not mention that additional judges had to be hired. Nor did Congress appear to bestow some budget bonus on the Agency. However, as reflected in the Board's bound decisions, a few new arrivals were added to the roster of judges during those 22 months (including one, Judge Robert M. Gates, returning, as mentioned earlier, from assignment elsewhere in the Agency). All have deemed EOD dates except for Judge William Spencer who appears on Division rosters with an EOD date of November 1, 1941. Thus:

Edes, Samuel	10-1-1941	Gates, Robert M.	1-1-1936
Guffey, William F. Jr.	2-1-1942	Maslow, Will	10-1-1941
Mouritsen, Frank A.	10-1-1941	Spencer, William E.	e11-1-1941
Wheaton, Carl C.	5-1-1942		

During the same period, as shown by the cases then and in succeeding months, at least two judges appear to have departed the Division before May 1942: Tilford E. Dudley and James C. Paradise (the latter appears to have switched in early 1942 to a staff position with the New York City office, Region 2). This would yield a net gain of five judges. Actually, because America had entered World War 2 some 6 months earlier, it is possible that some of the judges had begun leaving to join the war effort. Thus, as we saw earlier, Chief Judge George Pratt left the Agency in late July 1942 and reported for duty with the OSS where he served until the end of 1945. As Judge Pratt reports, "We had Labor Board people all over the OSS." *Pratt* at 155. (The persons Judge Pratt names as also being with the OSS were not judges. Of course, there were several other Government agencies that drew from the pool of government employees to help serve in the war effort.) In any event, the available numbers give us the following probable roster (with George Pratt as the Chief Judge) of 33 judges as of May 1942:

	<u>Name</u>	<u>Division EOD Date</u>	<u>Deemed EOD Date</u>
1.	Barton, William B.		8-1-1939
2.	Batten, James C.		5-1-1937
3.	Bellman, Earl S.	2-1-1938	
4.	Bloom, Frank		5-1-1937
5.	Bokat, George	2-1-1938	
6.	Denham, Robert N.		8-1-1938
7.	Edes, Samuel		10-1-1941
8.	Erickson, Gustaf B.		3-1-1938



9.	Fitzpatrick, James J.		12-1-1937
10.	Gates, Robert M.		1-1-1936
11.	Guffey, William F. Jr.		2-1-1942
12.	Hektoen, Josef L.		10-1-1939
13.	Hunt, A. Bruce	3-18-1939	
14.	Jaffee, Samuel H.		12-1-1937
15.	Kent, Henry J.		6-1-1937
16.	Maslow, Will		10-1-1941
17.	Mouritsen, Frank A.		10-1-1941
18.	Myers, Howard	8-1-1938	
19.	Persons, Charles E.		6-1-1937
20.	Powell, Webster		4-1-1938
21.	Pratt, George O.	11-15-1937	
22.	Raphael, Martin*		1-1-1938
23.	Riemer, Mortimer		2-1-1940
24.	Ringer, William R.	10-1-1937	
25.	Ruckel, Horace A.		8-1-1938
26.	Smith, Edward Grandison		5-1-1937
27.	Spencer, William E.	11-1-1941	
28.	Ward, Peter F .		2-1-1938
29.	William. P. Webb		8-1-1938
30.	Wheaton, Carl		5-1-1942
31.	Whittemore, Charles W.	8-1-1938	
32.	Wilbur, Walter		12-1-1935
33.	Wilson, Thomas S.	8-1-1938	

This explanation for the asterisk (\*) following the name of Judge Martin Raphael. As was discussed earlier respecting the identities of the judges appearing in the group photo of the May 1942 Judges Conference at Annapolis, Maryland, Judge Raphael's identification as one of those in the photo is well supported despite the fact that his last published activity with the Division was his January 13, 1942 Intermediate Report in the case of *New York Merchandise Co.*, 41 NLRB 1078 (6-19-1942) (for which the closing date of the trial was November 4, 1941). On the strength of his presence for the 1942 group photo, Judge Raphael is included on the reconstructed roster of May 1942 for the simple reason that we do not know all the facts.

For example, Judge Raphael could have just returned from a medical leave in time for the May 1942 conference, and then perhaps have departed to join another federal agency more closely involved with America's war effort. All this is, of course, speculation. The thought here is that if the Division deemed it proper for Judge Raphael to be included in the photo of attendees at the May 1942 conference, this paper, other than adding this note of explanation, should do no less respecting the reconstructed roster for May 1942.

With the reconstructed roster of May 1942, and the group photo of that month, perhaps we close the first chapter on the Division's history. As the Division entered the war years of the early to mid-1940s, new challenges arrived when a good many of the judges left either to serve in the war effort in some capacity, to transfer elsewhere in the Agency, or simply to enter private practice. Even so, the 1940s before Taft-Hartley, and perhaps all the way to about January 1951 when the San Francisco office opened (greatly reducing the travel burden on the judges), may still be considered as part of the Division's overall "early years."

Before we shift gears and move into the Taft-Hartley years, allow ourselves a short detour for a couple of short stories in the next section.

### 13. Before Covering Rules

Too often we of the modern years tend to think that the existing rules were always there. Not so. For example, what judge would like to preside knowing that a party could wait until after the judge's (adverse) decision to file a motion that the judge be disqualified for an alleged event the party already knew of during the trial? And would any modern judge think that one lawyer could punch out his opponent in open court — and escape punishment? Two interesting vignettes illustrate a couple of historical oversights.

#### *a. The disqualification trial of Judge Thomas S. Wilson*

Apparently unique in Board history, the July 16-26, 1947 disqualification trial of Judge Thomas S. Wilson, reported as part of the unfair labor practice case of *Kelco Corp.*, 79 NLRB 759 (1948), remains a stark reminder that judges are wise to be alert and careful about any ex parte conversations with a party's attorney during trial recesses even though the judge considers the topics unrelated to the trial at over which he or she is presiding.

In its exception number 11 to the March 21, 1947 (adverse) decision of Judge Thomas S. Wilson, Respondent Kelco alleged that on January 9, 1947, the second day of the trial at Baltimore, Maryland, and as Judge Wilson and Edward L. Rich Jr., Respondent's lead attorney, were walking on the street at the start of the noon recess, Judge Wilson made a statement reflecting "prejudgment of the issues of the case." The asserted statement was that Judge Wilson had said, "You haven't a chance to win this case, and I am going to see that you don't." *Kelco*, id. Today, of course, delaying that objection until after the judge's decision would fall short of the qualifying requirement in 29 *CFR* § 102.37 that any such objection must be registered **before** the judge files his or her decision. That apparently was not part of the rule in 1947.

On July 2, 1947, the Board directed that a supplemental hearing be conducted before Harold B. Teegarden, "a Trial Examiner of the Securities and

Exchange Commission [at this point footnote 1 states that Judge Teegarden's services were secured in accordance with Section 11 of the Administrative Procedure Act], to determine the issues of fact raised by the Respondent's 11<sup>th</sup> exception ... ." *Kelco*, id.

At the trial before Judge Teegarden, Attorney Rich testified that, as he and Judge Wilson walked together at the noon recess, they discussed issues in the case. As they came to a street corner, Judge Wilson suddenly asked, "You expect to beat the Board in this case?" To Rich's affirmative reply, Wilson allegedly stated, "You don't have a chance to win this case before the Board, and I'm going to see that you don't." Rich responded that Congress currently was investigating the Board, and industry hoped the result would be fairer decisions from the Board for industry. *Kelco*, 79 NLRB at 803, 810.



Judge Thomas S. Wilson

#32 in the 1938 group photo of the attendees at the November 15, 1938 Agency conference at Washington, DC.

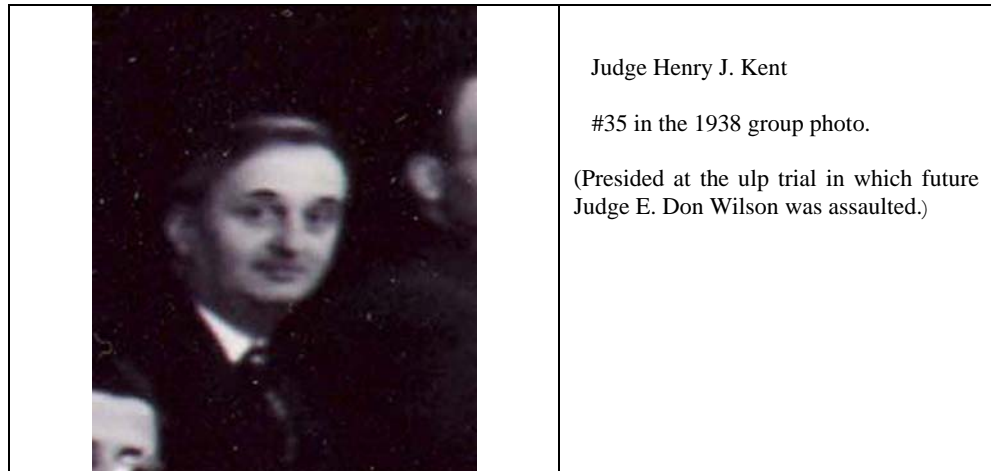
For his part, Judge Wilson (whose testimony Judge Teegarden describes as "direct and straightforward," 79 NLRB at 816) denied the allegation, testifying that he and Attorney Rich had not discussed the case at all, that instead, they had discussed their mutual friends, the Martin family, who lived in Oregon. 79 NLRB at 804.

In his August 26, 1947 Intermediate Report, Judge Teegarden, after summarizing and evaluating the conflicting testimony both as to the nature of the conversation and the distance, and route traveled, and after noting and discussing the delay until after the adverse decision before registering the objection (observing that such delay would be fatal to the exception in both Federal and State court, 79 NLRB at 816-817), essentially credited Judge Wilson. *Kelco* at 819.

On Kelco's appeal to the Board (Judge Wilson filed a brief with the Board), the Board heard oral argument "in which Respondent and counsel for Trial Examiner Wilson participated." 79 NLRB at 760. Adopting Judge Teegarden's findings of fact, the Board found no merit to Kelco's allegation of prejudgment by Judge Wilson. 79 NLRB at 760-761. Kelco's appeal to the Court Circuit involved only the Board's unfair labor practice findings, which the Court enforced, as modified. 193 F.2d 642, 29 LRRM 2328 (4th Cir. 1950).

***b. Attorney punches out future NLRB judge — and escapes suspension***

The first time the Board suspended an attorney, for misconduct at a Board proceeding, occurred in the case of ***John L. Camp***, 96 NLRB 51 (1951). As there found, in October 1949, in Rankin, Texas, E. Don Wilson (EOD 10-16-1961), then a staff attorney for NLRB Region 16 (Fort Worth), was prosecuting the General Counsel's complaint in an unfair labor practice (ULP) proceeding before Judge Henry J. Kent (EOD 6-1-1937).



The complaint, or ULP, case is reported as ***Ohio Oil Company***, 92 NLRB 1597 (1951). The respondent's lead counsel was John L. Camp — known from his college football days as "Bullet Camp." ***Camp***, 96 NLRB at 71, 73.

By the sixth day of the trial, October 26, 1949, after Respondent had begun its case in defense, the courtroom atmosphere between Wilson and Camp was tense. At one point Camp objected that Wilson was continually trying to impeach the company's witnesses on immaterial matters and repeatedly stating that they were not telling the truth. To this Wilson responded that "They have been lying all the way through." At that Camp punched Wilson in the eye, knocking him to the floor. Before Camp could be restrained by others, and

while Wilson lay flat on his back, Camp again punched him in the eye. *Camp*, id. at 60. Judge Kent excluded Attorney Camp from the balance of the trial. *Camp*, id. at 53-54, 64.

On November 4, 1949, the General Counsel of the Board filed a petition with the Board seeking to disbar Attorney Camp from practice in Board proceedings based on his misconduct of an aggravated nature in the *Ohio Oil Company* case, that being the October 26 physical courtroom assault on E. Don Wilson. *Camp*, id. at 51, 66. Following a delay resulting from Camp's unsuccessful efforts to obtain an order in Federal court enjoining the disciplinary proceeding (see *Camp v. Herzog*, 190 F.2d 605, 27 LRRM 2632 (DC Cir. 1951)), the disciplinary trial commenced before Judge Charles E. Ferguson (EOD 5-14-1948) in Fort Worth, Texas on October 17, 1950, concluding after a total of 7 trial days (some being in Abilene and in Rankin, Texas) in Washington, D.C. on November 10, 1950. *Camp*, id. at 69. On March 8, 1951, Judge Ferguson issued his report to the Board detailing his review of the evidence and stating his factual findings and factual conclusions. *Camp*, 96 NLRB at 52.

After first deciding that it had the "inherent power reasonably to control practice before it," and, further, "that it is empowered to conduct such proceedings as may be necessary to that end," *Camp* at 54, and after adopting Judge Ferguson's findings, *Camp* at 60, the Board then found that attorney Camp's misconduct "was of a serious nature and thus aggravated in character." *Camp* at 62. For its remedial order, the Board suspended Attorney Camp from practicing before the Board or its agents for a period of 2 years. *Camp*, 96 NLRB 64-65. Dissenting in part, Member Reynolds would have limited Camp's punishment to that imposed by Judge Kent — exclusion from the balance of the *Ohio Oil Company* case. Member Houston, specially concurring, would have imposed a 5-year suspension. *John L. Camp*, 96 NLRB 51 at 65-66 (9-10-1951).

Behind in the score at this point, Attorney Camp came back strong in the second round that took place before the Federal district court in Washington, D.C. That court, with Judge Morris presiding, decided that the Board had no inherent power, but did have the power to make rules. Because the Board's rule on the issue provided for exclusion, but not disbarment or suspension, the court vacated the Board's order suspending attorney John L. Camp. *Camp v. Herzog*, 104 F.Supp. 134, 29 LRRM 2709 (D. Ct. DC, April 7, 1952). The Board did not appeal. Camp had won.

Ironically, the court's reported decision reflects that, in the study that preceded the Report of the Attorney General's Committee on Administrative Procedure, the staff monograph covering the Board contained a suggestion that the Board, if it intended to maintain disbarment proceedings (two earlier proceedings to do so had been dismissed after apologies had been issued by the

offending attorneys), should promulgate a rule covering disbarment. *Camp v. Herzog*, 29 LRRM at 2712-2713.

Too late to assuage future Judge E. Don Wilson's probable emotional wounds from the physical assault delivered by "Bullet Camp" that October 1949 day, the Board added subsection (d)(2) to the rule on exclusion, with the amendment, covering suspension and disbarment, effective June 3, 1952. *Robert S. Cahoon*, 106 NLRB 831 fn. 1 (1953). *Cahoon*, a representation case, involves a counterpart provision to one in the rule then applicable to complaint cases. The current rule (covering all proceedings) is found at 29 *CFR* § 102.177 (d) (2).

And so it is that the only "punishment" Attorney John L. Camp received for physically assaulting future Judge E. Don Wilson (EOD 10-16-1961) in an October 1949 NLRB complaint proceeding was his exclusion from the balance of the unfair labor practice trial. With his suspension by the Board vacated, "Bullet Camp" had won the first fully litigated disciplinary suspension imposed by the Board. Thereafter, the Board wisely amended its disciplinary rule to provide for suspension and disbarment.

